

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. No. 699 of 2005

Date of decision: September 11, 2006

State of H.P. and another

Petitioners

VERSUS

Sharwan Kumar and another

Respondents

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting? NO

For the Petitioners: Mr.M.S.Chandel, Advocate General,
with Mr.J.S.Guleria, Law Officer

For the Respondents : Mr.K.D.Sood, Advocate

Deepak Gupta, Judge

The respondent was admittedly working as blacksmith with the Irrigation and Public Health Department of the State. According to the respondent he remained in service from 1.9.1993 till 31.3.1994 and thereafter the employer terminated his services verbally. According to him on 31.3.1994 the services of three other persons were also terminated, but they were reengaged whereas he was not called for a job and, as such the employer is guilty of following an unfair labour practice.

The petitioner contested the claim of the workman and according to it the respondent-workman

was engaged as daily rate workman on 1.12.1994 and his services were dispensed with on 28.2.1995. They stated that he had only worked for 89 days and, therefore, it cannot be said that he had been retrenched and in any event he had left the service of his own accord. The State has placed on record the man-day's chart showing that the respondent worked only from 1.12.1994 to 28.2.1995 i.e. 89 days. He had not worked for 240 days and, therefore, he was not entitled to the benefit of Section 25-F of the Industrial Disputes Act. Even if the averment of the respondent is taken to be correct, then also he worked only from 1.9.1993 to 31.3.1994 which would also not amount to 240 days. Even if it is held that his services have been terminated, it cannot be said that the termination of his services amounts to retrenchment.

The apex court in **Manager, R.B.I., Bangalore Vs. S.Mani and others AIR 2005 SC 2179** has held that the service of Ticca Mazdoors being not permanent in nature can be dispensed with subject to compliance of the statutory or contractual requirements, if any. Their status is not higher than that of a temporary workman or a probationer. The apex court also held that it is for the workman to prove that he has worked for 240

days or more and in case he does not prove so, he is not entitled to any benefit.

It has been strongly contended by Mr.K.D.Sood, learned counsel for the respondents, that the respondent has been discriminated against since the persons whose services were terminated alongwith him have been taken back in job, whereas no such offer has been made to him. Even as per the averment made in the statement of claim filed by the workman the said three persons were engaged as surveyor, mason and beldar and not as blacksmith. There is no material on record to show that any blacksmith junior to the respondent whose services have been terminated was ever re-engaged.

Keeping in view the aforesaid facts I find that the award of the Presiding Officer, Labour Court, Shimla is absolutely perverse. He has in fact not addressed himself on the main question as to whether the respondent had worked for 240 days in any calendar year or not. Since the workman has failed to prove this aspect of the matter, he was not entitled to any relief. The petition filed by the State is accordingly allowed. The award of the Labour Court-cum-Industrial Tribunal,

Dharamsala dated 12.4.2005 is set aside and the claim filed by the workman is dismissed. No costs.

September 11, 2006(K) (Deepak Gupta), Judge